

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2255 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMESHBHAI RATNAJI MARWADI

Versus

AIR INDIA

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Appearance:

MR BR GUPTA for Petitioner

None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:04/05/98

C.A.V. JUDGEMENT

1. The petitioner made the following prayers in this special civil application.

(A) To issue a writ of mandamus or any other appropriate writ, direction or order permanently restraining the respondent, its servants, agents, employees and representatives from discharging the petitioner from his service as a Handyman in

the respondent's District Sales Office at Anand, except in accordance with law and legal procedure; and to allot work and pay salary to the petitioner on regular basis as per the terms and conditions of his employment.

(B) Pending the admission, final hearing and disposal of this petition by this Hon'ble Court; the respondent, its agents, servants, employees and representatives be ordered and directed to allot work and pay salary to the petitioner as a Handyman in the respondent's District Sales Office at Anand on regular basis in accordance with the terms and conditions of his employment.

(C) To grant any other and further reliefs to the petitioner as may be deemed fit and proper in the premises.

(D) To award the costs of this petition from the respondent.

2. The special civil application is contested by the respondent. The respondent filed a detailed affidavit in reply to the special civil application and facts stated in the special civil application have been controverted. This special civil application had come up for admission before this Court on 23rd April, 1986, on which date, notice was issued to the respondent. After service of notice, the matter had come up for admission on 14th October, 1986, on which date, the petition was admitted and notice as to interim relief was issued returnable on 17th November, 1986. On 15th April, 1987, this Court has ordered, "By way of interim relief it is directed that the petitioner should be taken back in service on the same terms and conditions for the present and on the same salary within two weeks from today. The hearing of the petition to be expedited".

3. The petitioner has not filed rejoinder to the affidavit in reply, and as such, the averments made by the respondent in the reply stand uncontroverted.

4. The learned counsel for the petitioner contended that the action of the respondent to terminate the services of the petitioner is wholly arbitrary and unjustified. It has next been contended that the action of the respondent to keep the petitioner on daily wages is illegal and arbitrary and this Court may give the direction to the respondent to regularise his services and to give him the pay in the regular pay scale.

Lastly, it has been contended that for all these years, the petitioner is working under the interim relief of this Court, and as such, direction may be given to the respondent to regularise his services.

5. Nobody is present on behalf of the respondent.

6. In reply to the special civil application, the respondent has come up with a case that the petitioner has been engaged as a casual labourer as and when the temporary work was available in the office of the respondent at Anand. The casual appointment which has been given to him last has come to an end on 31st March, 1986. It has further been stated that the petitioner has not completed 240 days in 12 calendar months preceding 31st March, 1986. The claim of the petitioner for 'equal pay for equal work' etc. has been controverted.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

8. The petitioner undisputedly was engaged as a casual labourer in the office of the respondent at Anand. In the year 1983, the petitioner was engaged as a casual labourer, in all for 104 days. In the year 1984, the petitioner was engaged as a casual labourer for total days,  $29 + 31 + 30 + 15 + 31 + 31 + 31 + 30 + 15 = 243$  days. After 15th December, 1984, the petitioner was not engaged by the respondent as a casual labourer for about one year. On 2nd December, 1985, the petitioner has been engaged for 30 days then for 31 days he has been engaged in January, 1986 for the period from 1-1-1986 to 31-1-1986. In February, 1986, he was engaged for 18 days and in March, 1986, he was engaged for 29 days. So the status of the petitioner remains only to be of a casual labourer and by working as a casual labourer for some days, no right much less a legal or fundamental right has been accrued to the petitioner for regularisation of his services or to give him the pay in the regular pay scale. The petitioner was engaged as a casual labourer on daily wages and merely because of his serving as a casual labourer for some time, no enforceable legal or fundamental right has been accrued to him.

9. The contention of the learned counsel for the petitioner that this Court has protected the petitioner for all these years, and as such, now this long continuous working of the petitioner gives him a right of regularisation in services as well as of pay in the regular pay scale, but I do not find any substance in

this contention of the learned counsel for the petitioner. It is a settled law that the interim relief granted by this Court merges in the final order of the Court. When the petitioner has no case on merits and this petition has to be dismissed how on the basis of the fact that this Court has protected the petitioner by grant of interim relief and he is working for all these years under the stay order, any relief can be given to him. On this ground the relief is granted to the petitioner then the petitioner will get the relief though on merits he has no case whatsoever. That interim relief cannot be construed in the manner as what the learned counsel for the petitioner has contended nor the interim relief granted by this Court gives any right much less an enforceable right to the petitioner.

10. Taking into consideration the totality of the facts of this case, this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted by this Court stands vacated.

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